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DATE:

12/18

PLEASE DELIVER TO:

Country of Origin Labeling Program

FAX NUMBER:

(202) 720-3499

FROM:

John Himmelberg (202) 887-1461; E-mail: jhimmelberg@oconnorhannan.com

CLIENT/MATTER NUMBER:

32862-1

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Comments:

Re: DOC. NO. LS-0216
AMS Notice of Request for
Emergency Approval
of a New Information
Collection

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FLORIDA TOMATO EXCHANGE

"A Nonprofit Agricultural Cooperative Association"

December 18, 2002

Via Facsimile and First-Class Mail

Country of Origin Labeling Program
Agriculture Marketing Service
USDA Stop 0249
Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

Office of Management and Budget
New Executive Office Building
725 17th Street, NW Room 725
Washington, DC 20503

Attention: Desk Officer

Clearance Officer
USDA-OCIO
Room 404-W
Jamie L. Whitten Building, Stop 7602
1400 Independence Avenue, SW
Washington, DC 20250-7602

Sirs:

The Agricultural Marketing Service (AMS) by Federal Register Notice dated November 21, 2002, 67 Fed. Reg. 70205-70206, seeks emergency approval of a new information collection. AMS indicates that its request is to assist in gathering information on country of origin labeling during the "voluntary" labeling program period. The following are initial comments submitted on behalf of the Florida Tomato Exchange (FTE or Exchange) and pertain only to tomatoes specifically and fruits and vegetable generally.

As you know, the Exchange is one of several groups that have requested an extension of time within which to respond to this proposal. We believe there is no good reason to rush into regulations that by its own terms would have a major impact on several industries. Moreover, since we are now in a voluntary time period, no one is required to comply with any regulations, and therefore, there is no need for any emergency action. In fact, because of the importance the agency (AMS) attributes to its proposal, the Exchange requests that AMS consider conducting a series of hearings/meetings around the U.S. over the course of the next six to nine months to

receive testimony from those allegedly impacted by the regulations and record keeping requirements.

AMS makes several assumptions and statement that we feel are unwarranted and/or without foundation. First, AMS states its intention to use the experience gained by voluntary adoption of the labeling regulations by the industry and assumes that all entities in the industry will participate during the voluntary time period. There is little factual basis for these contentions. On the contrary, because there are penalties for entities that voluntarily adopt the labeling regulations, it is unlikely such companies will choose to follow these regulations until they become mandatory. And, it is our experience that few, if any, companies are now following these guidelines or are likely to follow them during the voluntary period. Only those companies that have state country of origin labeling are following any kind of labeling regulations. Thus, it appears that the most important basis for the agency for these new regulations simply will not be there to be considered.

Secondly while record keeping is important to ensure that companies are following the country of origin program, we disagree that record keeping is more essential to the program than actually getting companies to label at the retail level tomatoes and other products with the country of origin so that American consumers will know the country of origin. The emergency proposal fails to mention this critical element of the labeling program. We believe once this element is given its proper due, the record keeping requirements, audits, and investigations all fall into place and the result should be much less of a burden on companies in the industry and lessen dramatically the perceived need to establish a massive record keeping regime. The important issue for the program is to make sure tomatoes are labeled so the retail consumer knows where the tomato was grown.

We do not believe all the entities in the industry need to have new record keeping procedures in place. We do believe that all entities need to be able show the agency information in its possession or control that indicates the country of origin of the produce in question. For Florida tomato growers subject to the Federal Marketing Order, every container of tomatoes shipped out of Florida identifies the product as product of the U.S.A. Every container. In such a case, what else should be required of the shipper? We think nothing else. In addition, each shipment has a positive lot identification that indicates the particular farm and field in Florida of the tomatoes being shipped.

Nor, do we believe that the law envisions any audits of the industry if there is general compliance with the labeling requirements at retail. If there are widespread violations of the law, then and only then, do we think that audits and major record keeping should take place. We strongly urge that before the agency undertake the imposition of major record keeping requirement, it first consider a program that looks at the retail labeling to see if it is being done according to the law. By this we mean only that the produce is being labeled as it is supposed to be labeled. If there is a complaint, then the agency can look into the record of the company to determine the if the produce has been properly labeled.

For tomatoes and other perishable commodities, the U.S. Customs Service requires that imported shipments in bulk must be labeled as to the country of origin. If the tomatoes come into the U.S. in smaller than bulk containers or packages then the Customs regulations require that each package or container be labeled as to its country of origin. In addition, the Perishable Agricultural Commodities Act (PACA) requires that each licensee (dealer, broker, or commission merchant) maintain records of purchases and sales for two years, and it is a violation of PACA to mislabel produce or to misstate the country of origin or to make a false statement for a fraudulent purpose, which misstating the country of origin certainly would be.

Under the Customs regulations, if the imported product is intended to be sold or transferred to a purchaser or repackager, then the seller is required to complete a certification that it will notify the buyer that the product must be labeled as to the country of origin. We believe AMS can simply request the certification notice from the parties but only when there is a need to. Again, we emphasize that we think it unwise to establish the system as proposed because it is not needed as there are documents that are in existence because of other laws, and more importantly, because the purpose of the law is to ensure the labeling at retail. Creating an audit trail is not needed at this time for the produce industry. If needed, and we do not think anything else is needed at this time for the law to be enforced, then we suggest AMS consider using the certification system used by the U.S. Customs Service to assure that the labeling law is being followed.

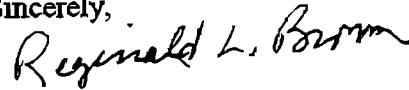
In summary, the Florida Tomato Exchange believes this proposal undermines the letter and spirit of the country of origin labeling law. It does nothing to assure that produce is properly labeled at retail as to the country of origin. What is needed first is a regime that checks periodically to see if the law is being followed at the retail level so that American consumers will know the country of origin. We do not need an audit trail. This has been done successfully in Florida for many years. For produce, there are enough Federal requirements for records that indicate the country of origin that any additional requirements are superfluous. If produce is not being properly labeled or there are credible complaints, then AMS should investigate. We have no doubt if a complaint against a retailer is upheld by AMS, then the retail supplier of the product improperly labeled will no longer supply that retailer.

We don't think the law mandates what is being proposed. The proposal overreaches and is unnecessary. The assumptions are unwarranted, are based on conjecture, and are not supported by facts. We believe the law as it applies to produce requires no new record keeping, and, no new record keeping burden is required on entities in the produce industry. As it pertains to the produce industry, we believe this proposal is simply wrong.

Given the assumptions and guesses made in this proposal, we believe the information obtain through the Federal Register process will not provide useful information that will assist AMS in making sure that produce is labeled as to its country of origin so consumers will see the country of origin. Given the scope AMS has given to implementing this proposal, we strongly urge AMS to take a step back and seek public

comment from the affected industries and from the public in a series of hearing around the country.

Sincerely,

A handwritten signature in cursive script that reads "Reginald L. Brown".

Reginald L. Brown

Cc: A.J. Yates
Administrator
Agricultural Marketing Service

Florida Congressional Delegation

Board of Directors